

## REMARKS

Entry and reconsideration of the subject application, as amended, is respectfully requested.

Claims 1-3, 5, 6 and 8-16 are pending and stand rejected.

Claims 1, 2 and 11 have been amended.

### Rejection under 35 USC 103

The Examiner has rejected claims 1-3, 5, 6, and 8-10 under 35 USC 103(a) as being unpatentable over Ohran (USP no. 5,812,748) in view of Vinther (WO 92/18931).

Applicant respectfully disagrees with the rejection of the claim. However, the claim has been amended to more clearly recite the invention, in that claim 1 has been amended to explicitly recite that the network between respective ones of the computer in the network is not available and that the alternate path between the computer is implemented as a virtual network interface process. Support for the amendment may be found at least on page 17, lines 5-7 (“in the event that the Internet 32, WAN or part thereof fails or is not available”) and on page 19, lines 10-12 (“[f]or illustrative purposes only, this process will be referred to as a Virtual Network Interface Card process.”).

Ohran discloses a method for providing rapid recovery from a network file server failure through the use of a backup computer system. The backup computer system runs a special mass storage access program that communicates with a mass storage emulator program on the network file server, making the disks on the backup computer system appear like they were disks on the file server computer. Ohran teaches the use of a heartbeat system to determine which of two computer systems is selected as a primary and which is selected as a backup (see, for example, col. 14, lines 14-27). Ohran further teaches that communication means 2102 is used to synchronize the data between two different file servers to maintain the data content between the two file servers in case the backup file server must take over the functions of the primary file service. Hence, Ohran teaches that the communication means 2102 is used for transfer independent of whether the network between the computers is determined to be unavailable.

Hence, Ohran fails to teach a material element recited in the claims (i.e., enabling transmission via an alternate path between respective computers wherein the network between the computer is unavailable.)

Vinther fails to provide any teachings that would correct the deficiency found to exist in Ohran as Vinther considers failures in the network nodes and not the network. (see, for example, page 6, line 31- page 7, line 4, “[f]ailure of the fileserver node is catastrophic since the fileserver contains information needed by a large number of nodes. Accordingly, a backup fileserver 16 is connected to the primary fileserver through a parallel port 18 to maintain a copy of all of the primary’s files. Upon failure of the primary, the backup automatically assumes the role of the primary in a manner transparent to the other nodes on the network. More specifically, other nodes may continue to access the central file system without any special instruction from the users.”).

A claimed invention is *prima facie* obvious when three basic criteria are met. First, there must be some suggestion or motivation, either in the reference themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine the teachings therein. Second, there must be a reasonable expectation of success. And, third, the prior art reference or combined references must teach or suggest all the claim limitations.

In this case, the invention recited in independent claim 1 is not rendered obvious by the references cited as the combination of the teachings of the references teaches or suggests all the elements recited in the claims.

For at least this reason, applicant submits that the reason for the rejections of independent claim 1 has been overcome and the rejection can no longer be sustained. Applicant respectfully requests withdrawal of the rejection and allowance of the claims.

With regard to the remaining dependent claims, these claims ultimately depend from the independent claims, which have been shown to be allowable over the cited references.

The remaining claims are also allowable by virtue of their dependence from an allowable base claim.

Applicant: Robin Budd, *et al.*  
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**Rejection under 35 USC 102**

The Examiner has rejected claims 11-13 and 16 under 35 USC 102 as being anticipated by Ohran.

Applicant respectfully disagrees with the rejection of the claims. As described above, Ohran teaches a method for implementing a backup system when a primary system is determined to have failed. However, Ohran fails to teach the claim element "recognizing that the network between the applications is unavailable," as is recited in claim 11.

A claim is anticipated only if each and every element recited therein is expressly or inherently described in a single prior art reference.

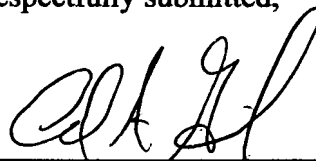
Ohran cannot be said to anticipate the present invention, because Ohran fails to disclose the element of "recognizing that the network between the applications is unavailable." Rather, Ohran teaches a failover backup when a server fails and not when the network fails.

For the above arguments, applicant respectfully requests that the claims be entered and after reconsideration removal of all claim rejections for any pending claims and allowance of those same pending claims.

In the event the Examiner deems personal contact desirable in the disposition of this case, the Examiner is invited to call the undersigned attorney at (914) 798 8505.

Kindly charge any fees required for consideration of this paper to EMC Corporation Deposit Account No. 05-0889 as denoted on the Transmittal Form, filed in duplicate herewith.

Respectfully submitted,



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